

# EXHIBIT 8

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC., MARVEL )  
CHARACTERS, INC., and MVL RIGHTS,) )  
LLC, )

Plaintiffs, )

vs. )

LISA A. KIRBY, BARBARA J. KIRBY, )  
NEAL L. KIRBY and SUSAN N. KIRBY, )

Defendants. )

CASE NO.

10 CV 141 (CM)(KNF)

Pages 1 - 192

VOLUME I

VIDEOTAPED DEPOSITION OF MARK EVANIER  
LOS ANGELES, CALIFORNIA  
TUESDAY, NOVEMBER 9, 2010

REPORTED BY:

LESLIE L. WHITE

CSR NO. 4148

JOB NO.: 34167

1           Q     Now you mentioned that you saw him a lot  
2 during that period, let's say from 1972 until his death  
3 in -- I believe it was 1994, was it?

4           A     I should know this. '94 I believe, yes.

5           Q     During that period of time I take it you  
6 remained in close contact with Mr. Kirby?

7           A     Yes, I did.

8           Q     Is that a fair statement?

9           A     That is a fair statement, yes.

10          Q     And you would have dinners with the family,  
11 among other things?

12          A     From time to time, yes.

13          Q     And, in fact, Mr. Kirby became a very close  
14 friend of yours; isn't that right?

15          A     I would like to think so.

16          Q     And you stated publicly that he treated you  
17 like family; isn't that right?

18          A     I may have said that at times, yes. I  
19 actually --

20          Q     And, indeed, he even introduced as his son  
21 Mike from time to time?

22          A     He made that slip once, yes.

23          Q     And it's fair to say that over that period of  
24 time you came to idolize Jack Kirby, didn't you?

25          A     I would never -- I would not use the word

1           A     No, they were not.

2           Q     And I take it that some of them eventually  
3 ended up at DC; is that right?

4           A     DC and other places, yes, other companies.

5           Q     Now focusing on the "other" category, the  
6 category that you say Mr. Kirby told you about, the  
7 rejected pages, what did Mr. Kirby tell you about those?

8           A     He showed me pages that -- well, he showed me  
9 pages that were from old -- that I recognized, and which  
10 he confirmed were recent issues of Thor or Fantastic  
11 Four -- there might been some Captain Americas in  
12 there -- pages that Marvel had sent back to him because  
13 they wanted something different, they wanted the pages  
14 changed. In some cases he had erased pages and sent  
15 them back, but in some cases it was easier for him or  
16 necessary for him because the requests for revision were  
17 so extensive that he drew on fresh paper.

18                     He also -- and he showed me -- not on my first  
19 visit with him, but on a subsequent visit -- he showed  
20 me a story in progress that he had to do extensive  
21 revisions on in order to get Marvel to accept.

22           Q     Now you indicated that he had to do extensive  
23 revisions. Did he tell you when he submitted these who  
24 he submitted them to at Marvel?

25           A     Um, I believe -- I don't know that he told me

1 specifically. I just assumed they were submitted to  
2 Stan Lee.

3 Q To the editor?

4 A Yes.

5 Q And was it your understanding that from time  
6 to time the editor, whether it was Stan Lee or later,  
7 whoever replaced Stan Lee, that they would ask for  
8 changes in the work done by Mr. Kirby?

9 A Well, first of all, if we're talking about the  
10 material he showed me in 1969 --

11 (Speaking simultaneously.)

12 BY MR. QUINN:

13 Q Yes, let's focus on that material.

14 A -- then there would not be subsequent  
15 editors --

16 Q Fair enough --

17 A -- because Stan was the editor --

18 Q Fair enough.

19 A Let's see -- now can I have the question  
20 again?

21 Q Sure.

22 A All right.

23 Q Based on what Kirby told you, was it your  
24 understanding that from time to time Stan Lee, the  
25 editor, would ask Mr. Kirby to make changes in some of

1 the artwork he submitted?

2 A Yes. He would also just reject, say, "I don't  
3 like the end of this story. Do something different with  
4 it."

5 Q And, in fact, Mr. Kirby would then go back and  
6 make a change or come up with a new ending; is that  
7 fair?

8 A Yes, that is correct.

9 I might also add that Jack also complained to  
10 me that pages were being rejected, but not returned to  
11 him; that the art was -- he was not getting the pages  
12 back that he felt he was owed.

13 Q When did he tell you this?

14 A 1969, when I first met him.

15 Q All this time when you were 17 years old?

16 A Yes.

17 Q Okay.

18 A And he subsequently talked about it in later  
19 years.

20 Q And it's correct, is it not, that after the  
21 changes were made they would be resubmitted for approval  
22 by Mr. Lee?

23 A Jack would redo the material and send it back.

24 Q And when he redid the material and sent it  
25 back, he would get his page rate; correct?

1 A For the -- yeah, for the -- yes.

2 Q For the redone material.

3 A Well, he got the page rate for the story. I  
4 mean, Jack's complaint was that when he -- if he had to  
5 draw 26 pages for a 20-page story, he was only paid for  
6 20 pages.

7 Q And that's a complaint he made to you?

8 A Yes. And his wife complained about that a lot  
9 also.

10 Q Let me see if I have this right. He submits a  
11 story, and Lee says to him, "You got to change four  
12 pages" --

13 A Yes. Excuse me, let me amend that. I don't  
14 know that Stan would specifically say, "Change four  
15 pages --"

16 Q Okay.

17 A -- he might just say --

18 Q "I don't like this"?

19 A -- "I don't like the ending of the story. I  
20 want something else."

21 Q Fine. And Kirby would go back, redo the  
22 ending of the story, resubmit it and then get paid for  
23 the story?

24 A Correct.

25 Q Okay. Now when did you meet Stan Lee for

1 and that that is how the comic was created.

2 Q Do you agree with Mr. Lee's statement -- it is  
3 also his testimony, but let's put it aside -- you're  
4 familiar with the statement that the Fantastic Four came  
5 about, at least in part, because of a discussion that he  
6 had with Martin Goodman -- by the way, do you know who  
7 Martin Goodman is?

8 A Yes, I do.

9 Q Did you ever meet him?

10 A I shook hands with him in a hallway very  
11 briefly.

12 Q Many, many years ago?

13 A 1970, the same meeting.

14 Q Same meeting?

15 A It was not the same day actually. It was a  
16 day or two afterwards.

17 Q Other than shaking hands with Mr. Goodman, you  
18 have never had a substantive conversation with him;  
19 correct?

20 A That is correct.

21 Q Go back. Do you agree with Mr. Lee's  
22 statements that the Fantastic Four, at least in part,  
23 came about as a result of discussions that Mr. Lee had  
24 with Mr. Goodman in connection with the idea of coming  
25 up with a group of superheroes?



1           A       My understanding is that Mr. Goodman said to  
2 Mr. Lee, "I see DC Comics has some very decent sales on  
3 what is called the Justice League of America. We should  
4 try a comic like that."

5           Mr. Lee, in many interviews, said as I  
6 related, that Mr. Goodman had played golf with  
7 Jack Leibowitz, who was the head of DC Comics at the  
8 time, and that Leibowitz had bragged about the sales of  
9 Justice League, and that that prompted Mr. Goodman to  
10 come back from the golf game and say, "We should -- we  
11 should create a comic like that."

12           Mr. Lee has told this story on many occasions.  
13 Mr. Leibowitz, when he was interviewed, said he never  
14 played golf with Goodman in his entire life.

15           So based on that, I tend to disbelieve at  
16 least that part of Mr. Lee's story.

17           Q       So you think Lee is just lying about it?

18           A       No, I think he just is being casual about the  
19 record.

20           Q       Have you seen the document that is -- I guess  
21 was it a plot outline -- a document that I guess it has  
22 come to have the term "synopsis" with regard to the  
23 first issue of the Fantastic Four?

24           A       Yes, I have.

25           Q       And are you -- when did you first see that

1 deposition of Mark Evanier. We're off the record at  
2 11:42 a.m.

3 (A recess was taken from  
4 11:42 a.m. to 11:56 a.m.)

5 THE VIDEOGRAPHER: This is the beginning of disc  
6 No. 2 in the deposition of Mark Evanier. We're on the  
7 record at 11:56 a.m.

8 BY MR. QUINN:

9 Q Mr. Evanier, just to close this particular  
10 loop, so it was your understanding, with regard to the  
11 Fantastic Four, that Mr. Kirby and Mr. Lee sat down  
12 beforehand and discussed the plot and the storyline,  
13 before it was published, before -- let me rephrase that.

14 A All right.

15 Q Was it your understanding that Kirby and Lee  
16 sat down to discuss the plot and the storyline before  
17 Mr. Kirby actually began to draw the characters?

18 A Yes, that is correct.

19 Q Okay.

20 A I actually didn't --

21 Q I'm sorry --

22 A I didn't finish my answer before the break  
23 there.

24 Q Go ahead.

25 A You were asking me why I thought that the

1 synopsis had followed a meeting with Jack's giving his  
2 input.

3 Another reason is that the storyline of  
4 Fantastic Four is very similar in a number of ways to a  
5 comic Jack had done previously called the Challenger of  
6 the Unknown, very similar structure to the characters.  
7 It feels an awful lot more like Jack's earlier work than  
8 anything that Stan had done to that date.

9 So I find it very difficult to believe that  
10 Jack did not have input into the creation of the  
11 characters prior to the -- that synopsis, whenever it  
12 was composed.

13 And, also, I have the fact that I talked to  
14 Stan many times, and he told me -- and he said it in  
15 print in a few places -- that he and Jack had sat down  
16 one day and figured out what the Fantastic Four would  
17 be.

18 Q And they discussed the plot before they  
19 actually -- the drawings were done?

20 A They discussed the plot before the alleged  
21 synopsis was done also.

22 Q And was it your understanding, with regard to  
23 these other characters -- and we can go through all of  
24 them, or just we can get a general understanding -- that  
25 this was typically what was done, that Lee and Kirby

1 would sit down together, discuss the plot, discuss the  
2 storyline, and then Kirby would go and draw whatever he  
3 was going to draw?

4 A Correct.

5 Q Now -- and at least in part, that  
6 understanding is based on what Mr. Kirby told you?

7 A Mr. Kirby's accounts to me are part of my  
8 understanding.

9 Q Right. And some of Mr. Lee's statements to  
10 you are part of your understanding?

11 A That has also contributed to my  
12 understanding --

13 Q What you read is part of your understanding?

14 A Yes.

15 MR. QUINN: Let me show you a document we will mark  
16 this as Kirby -- Evanier 2. And this was a document  
17 that I believe was produced from your files -- and the  
18 reason I say that is, as you will see, it has your  
19 initials, production initials on it.

20 (Exhibit 2 was marked for  
21 identification by the Reporter.)

22 MR. TOBEROFF: He's referring to the "ME" at the  
23 bottom.

24 THE WITNESS: Good, I get to be a code number.

25 ///

1 sequence that was a story -- roughly concurrent, they  
2 were all from about the same period of time, which would  
3 have been '66 or so. '66 or '67.

4 Q So it's fair to assume that at least with  
5 regard to some issues, in fact, Stan Lee did prepare  
6 plot outlines?

7 A These were all plot outlines that were notes  
8 for meetings where Jack had input, that they said in  
9 them, "As we discussed in this," and such.

10 And I also do not know for sure that these  
11 were Stan Lee prepared. They were filling the role that  
12 Stan allegedly performed, but they may have been typed  
13 up -- written by an editorial assistant who sat in the  
14 meetings for all I know.

15 Q But you did refer to them here as "Stan Lee  
16 plot outlines"?

17 A Yes, yes, I was being casual. They were  
18 Stan Lee plot outlines, even if they were ghosted by  
19 somebody else or typed up by somebody else, but they  
20 were not necessarily all Stan's work.

21 Q And it's your understanding that Lee and Kirby  
22 would have discussions, and then Stan Lee, or one of his  
23 editorial assistants, would then create a plot outline  
24 for Kirby to use in connection with his artwork?

25 MR. TOBEROFF: Objection. Overbroad. Which

1 attention to that kind of thing."

2 Was that your understanding of how Jack  
3 operated?

4 MR. TOBEROFF: Where is that?

5 MR. QUINN: Last sentence of the first paragraph.

6 THE WITNESS: Jack paid very little attention to  
7 who inked his work, yes, that's correct.

8 BY MR. QUINN:

9 Q And two pages later there's a question, "Did  
10 Jack really have a bad memory?"

11 And you write:

12 "By common definition yes...but I  
13 think it was more a matter of his  
14 mind wandering in 19 directions at  
15 once. Every so often, he would  
16 surprise me with some (apparently)  
17 crystal-clear recollection of 30  
18 years before."

19 And that was your understanding with regard to  
20 Mr. Kirby's memory?

21 A Well, this is -- first of all, this is  
22 something I wrote about 10 years ago. And I probably  
23 would phrase it differently today. But Jack did -- you  
24 know, he made mistakes, like a lot of people do.

25 Q When you're writing these answers to

1 Frequently Asked Questions, you do try to be accurate,  
2 don't you?

3 A Yes. Yes, I try to be accurate. I am not  
4 speaking in lawyer language.

5 Q No, you're speaking in people language. I  
6 understand that.

7 A I'm speaking in language that I think will be  
8 understood by the kind of people who would come to the  
9 website looking for information on Jack.

10 Are we done with 11?

11 Q We're done with 11, and we're going to skip  
12 12.

13 A Okay.

14 Q Could you go to 13: And specifically there is  
15 a question, "Did Jack design Spider-Man's costume?" Do  
16 you see that?

17 A Yes.

18 Q And you answered, "No, Steve Ditko designed  
19 the distinctive costume we all know and love."

20 And that's your understanding; right?

21 A Yes.

22 Q And then in the next paragraph you make  
23 reference to (Reading):

24 "But for all the things Jack did  
25 well, he was not great at being

1 interviewed. He occasionally got  
2 carried away or confused. There  
3 were -- there was one interview  
4 where, without realizing what he  
5 was saying, he said he created  
6 Superman. Needless to say he never  
7 really believed that, but somehow  
8 that is what came out of his  
9 mouth."

10 You wrote that, didn't you?

11 A Yeah. Actually, when I originally wrote it  
12 there was another paragraph after this -- which I guess  
13 I deleted, because it is not in here -- talking about  
14 how Stan Lee used to occasionally refer to Superman.

15 I was trying to point out that both guys  
16 referred to Superman erroneously in print.

17 Q This is what you wrote?

18 A I wrote -- yes, I'm just saying there was  
19 another paragraph here that I guess I deleted it.

20 Q You deleted that other paragraph --

21 A At some point, yes.

22 Q Then you go on later to say:

23 "In at least one such  
24 conversation" -- this is a couple  
25 lines down -- "he" referring to



1 Jack -- "misspoke and claimed he  
2 designed the costume for the final  
3 version of Spider-Man."

4 Do you see that?

5 A Yes.

6 Q And he was mistaken about that, wasn't he?

7 A Yes.

8 Q And then at the last sentence you say:

9 "In this case, however, the cover  
10 was drawn after Stan had rejected  
11 one drawn wholly by Ditko"; right?

12 A Yes.

13 Q And originally it is your understanding that  
14 with regard to Spider-Man, Lee had initially assigned it  
15 to Jack Kirby, and then he switched it to Ditko;  
16 correct?

17 A Originally Jack drew Spider-Man, and then they  
18 stopped Jack, and Ditko took over.

19 Q And that was at Stan Lee's request, wasn't it?

20 A I would assume so.

21 Q And on the next page you wrote -- actually, in  
22 the bottom of the next page -- or bottom of this page  
23 under, "What did Jack do on the first stories of Iron  
24 Man and Daredevil," you wrote, "The first Iron Man story  
25 was wholly drawn by Don Heck"; correct?

1           A     I think there were a couple of other reasons,  
2     yes.

3           Q     What were the other reasons that you think  
4     that they did that?

5           A     I think they liked the idea that you were  
6     dependent on them, that you worked -- that a freelancer  
7     was at their financial mercy.

8                     And if you worked out in Los Angeles there  
9     seemed to be always this possibility you might get --  
10    sell work to other people or get other sources of income  
11    and would not then be so dependent on the company's page  
12    rates.

13          Q     Looking at what is page 66 in this article, in  
14    the middle column --

15          A     Uh-huh.

16          Q     -- you say, referring to how it was until  
17    recently (Reading):

18                     "This was the way it was in comics  
19                     until very recently."

20                     This was in 1984, so --

21          A     Yeah.

22          Q     (Continuing):

23                     "If you had a great -- if you had  
24                     the greatest idea for a comic book,  
25                     the new Spider-Man, there was no

1 American comic book publisher to  
2 whom you could take the damn thing  
3 and share in its success. No one.  
4 They wouldn't guarantee you  
5 creative control of it, they  
6 wouldn't guarantee you a continuing  
7 credit on it, they wouldn't  
8 guarantee not to fire you and bring  
9 in someone else."

10 That was your understanding; correct?

11 A Yes.

12 Q Jones, the questioner, says: "Wasn't this  
13 negotiable?"

14 And you say, "No, they had a policy."  
15 Correct?

16 A Yes, I said that.

17 Q That was your understanding?

18 A Yes.

19 Q In the next paragraph -- the next column, I'm  
20 sorry, there is a reference to -- you say:

21 "I was there for some of this.

22 DC's publisher was sitting in a  
23 very expensive suite at the Beverly  
24 Hills Hotel telling Jack that DC  
25 could not pay royalties, they could

1 not and would not ever give anyone  
2 a profit participation."

3 Do you see that?

4 A Yes.

5 Q And then you go on to say: "I heard executives  
6 at Marvel essentially saying the same thing," and that  
7 was your understanding at the time; right?

8 A Yes.

9 Q They wouldn't pay royalties, they wouldn't  
10 give a profit participation, would they?

11 A Right.

12 Q Bottom of page 69, first column, very bottom,  
13 you talking (Reading):

14 "He's tough for me to talk  
15 about" -- referring to Jack --  
16 "because we're practically family.  
17 In fact, you know, Jack has a bad  
18 memory at times. I have known him  
19 over 15 years, and he always  
20 introduces me to people as Mike,  
21 and he sometimes introduces me as  
22 his son."

23 So actually he did it more than once, didn't  
24 he?

25 A No, I think he only did it once.

1 BY MR. QUINN:

2 Q Bottom of page 78, the third column --

3 A Uh-huh.

4 Q -- you state:

5 "I can say with some authority --  
6 and with quotes from both Stan and  
7 Jack to back me up and much  
8 existing paperwork -- that most of  
9 the Lee and Kirby comics were done  
10 as follows. Stan and Jack  
11 sometimes get together and talk out  
12 the direction of the story, and  
13 then Stan would sometimes type up a  
14 plot outline incorporating both  
15 their ideas. That's sometimes, not  
16 always. At some point, Jack would  
17 go to the drawing board and pencil  
18 out 20 pages or whatever, writing  
19 notes in the margin as to what was  
20 going on. If you come across Kirby  
21 original art of the period, you can  
22 see his notes in the margins  
23 explaining to Stan what was going  
24 on. Now, in some cases Jack would  
25 have a discussion with Stan. In

1           some cases, he'd have a short plot  
2           outline. In some cases, he'd have  
3           absolutely nothing at all; he'd  
4           just pencil the issue out, and when  
5           he handed it in, Stan would find  
6           out that the story was about. Stan  
7           would then take the pages home and  
8           write the copy and that would go --  
9           that would go in the balloons. In  
10          some cases he would take Jack's  
11          marginal notes and turn them into  
12          presentable speech and use them.  
13          In other cases, he would deviate  
14          from what Jack intended, as much as  
15          anyone can deviate when the page is  
16          already drawn, and the poses and  
17          attitudes of characters are set."

18               Now was that your effort to describe what came  
19   to be known as the "Marvel method"?

20           A     That was my attempt to describe the way Lee  
21   and Kirby worked at the time.

22           Q     And did that particular description come to be  
23   known in comic book circles as the "Marvel method"?

24           A     Loosely, yes.

25           Q     On page 83 in this interview in the first